IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.95 of 2006 (O&M)
Date of decision:2.11.2006

Commissioner of Central Excise, Jalandhar (Hqrs. at Chandigarh)

....Appellant

versus

M/s. Birla VXL Limited, Amritsar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. MS Guglani, Central Govt. Counsel for the appellant.

JUDGMENT:

For the reasons stated in the application for condonation of delay of 22 days in filing the appeal, which is supported by an affidavit of the counsel for the appellant, delay in filing the appeal is condoned.

Delay of 16 days in re-filing of appeal is also condoned.

Heard on merits.

This appeal has been preferred by the revenue against the order dated 21.4.2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') in Appeal No.E/4094/04-B, proposing following questions of law:-

> "i)Whether distinction is to be made between a procedural condition of a technical nature and a substantive condition?
>
> ii) Whether in the case of such violation of procedures assessee is required to be penalized for having violated the specific provisions of the law?"

The assessee imported woollen fabrics under Duty Exemption Scheme and sought permission to send fabrics to M/s. Givo Limited, Gurgaon for conversion into suits for export. The permission was granted subject to execution of bond for safeguarding duty. The suits manufactured

were partly exported after bringing the same to the assessee's factory and the remaining were directly exported from the job worker premises. The department levied duty on the fabrics used in the suits exported from job worker premises on the ground that the assessee was required to bring the same to its own factory before its export. The duty was upheld by the appellate authority. On further appeal, the assessee submitted that the export was evidenced by shipping bills and the said documents mentioned the job workers of the assessee, which were duly verified by the custom authorities. The assessee should, thus, be taken to have met its obligation under the Duty Exemption Scheme to export goods produced out of the imported fabrics, imported duty free. This plea was upheld by the Tribunal.

Learned counsel for the revenue submits that as per the procedure laid down, the assessee was required to export the goods only after bringing the same to its own factory and though violation was procedural and technical, the imposition of duty and penalty was valid.

We are unable to accept the submission made. The Tribunal has held that export by the assessee was duly cross-checked by the custom authorities and discharge of export obligation by the assessee was thus, beyond doubt. In such a situation, imposition of duty or penalty is not called for.

We are of the view that no question of law arises nor the view taken by the tribunal can be held to be erroneous in any manner.

Accordingly, the appeal is dismissed.

(Adarsh Kumar Goel)
Judge

November 2, 2006

(Rajesh Bindal)
'gs' Judge